



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No.1670 of 2018
and
Civil Miscellaneous Petition No.13151 of 2018
[Through Video Conferencing]

The Divisional Manager,
M/s.National Insurance Company Limited
Nehru Street,
Pondicherry.

... Appellant / 2nd respondent

Vs.

1.Kamalakannan
2.Bharat

... 1st Respondent / claimant
... 2nd Respondent/1st respondent

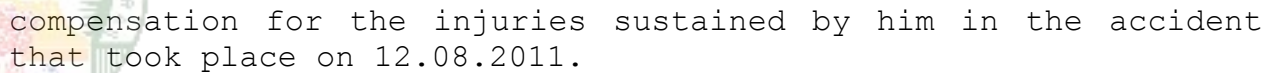
This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 27.02.2018 made in M.C.O.P.No.717 of 2011, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Villupuram @ Tindivanam.

For Appellant : Mr.J.Michael Visuvasam
For R1 : M/s.K.M.Vijayan Associates
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation granted by the Tribunal in the award dated 27.02.2018 made in M.C.O.P.No.717 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Villupuram @ Tindivanam.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.717 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Villupuram @ Tindivanam. The first respondent/claimant filed the said claim petition, claiming a sum of Rs.8,00,000/- as



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Tindiva

5. The appellant/Insurance Company, filed counter statement and denied all the averments made by the first respondent/claimant in the claim petition. The appellant/Insurance Company denied the manner of accident as alleged by the first respondent/claimant. It is stated that the two wheeler involved in the accident was not insured with the appellant/Insurance Company on the date of accident. The second respondent who is the rider cum owner of the two wheeler was not possessing valid driving license at the time of accident. The vehicle was used in violation of statutory provisions and hence, the appellant/Insurance Company is not liable to pay any compensation to the first respondent/claimant. The Insurance Company also denied the age, occupation, injuries suffered and medical expenses incurred by the first respondent/claimant. It is also stated that the quantum of compensation claimed by the first respondent/claimant is highly excessive and hence, the learned counsel prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent/claimant examined himself as P.W.1 and 20 documents were marked as Exs.P1 to P20. On the side of the appellant/Insurance Company one witness was examined as RW1 and marked four documents as Exs.R1 to R4. In addition to that, Ex.C1 was marked as Court document.

7.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the two wheeler owned by the second respondent and directed the appellant/Insurance



Company to pay a sum of Rs.1,46,621/- as compensation to the first respondent/claimant.

8.Questioning the quantum of compensation awarded by the Tribunal in the award dated 27.02.2018 made in M.C.O.P.No.717 of 2011, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to consider the fact that the second respondent, who is the owner cum rider of the said motorcycle, was not having valid driving licence at the time of accident. Further, there is negligence on the part of the first respondent/claimant as he attempted to cross the road without noticing the vehicle driven by the second respondent while crossing Marakanam to Tindivanam main road. The Tribunal without considering Ex.C1/Medical Board Report granted Rs.60,000/- towards disability which is highly excessive. The Medical Board, under Ex.C1 has opined that the disability of the claimant is 20% and therefore, the sum of Rs.60,000/- awarded is excessive. Further, the Tribunal awarded a sum of Rs.25,000/- towards Loss of amenities which is also on the higher side and it is required to be scaled up. In any event, when the rider of the two wheeler did not possess a valid driving license at the time of the accident, the Insurance Company cannot be mulcted with the liability to pay compensation to the claimant and hence, the learned counsel prayed for setting aside the award passed by the Tribunal. The learned counsel would further submit that since the rider of the two wheeler did not possess valid driving licence at the time of accident, the Tribunal ought to have directed the appellant/Insurance Company to pay the compensation at the first instance and recover the same from the first respondent.

10.The learned counsel for the first respondent/claimant submitted that the Tribunal had properly appreciated the evidence let in before the Tribunal and awarded a reasonable amount as compensation. Therefore, the award passed by the Tribunal need not be interfered with by this Court.

11.Heard the learned learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the first respondent/claimant and perused the entire materials available on record.

12. It is the case of the first respondent/claimant that in the accident, he suffered several lacerated injuries and abrasions all over the body. The first respondent/claimant was



referred to Medical Board and the Medical Board examined him and certified that he suffered 20% disability under Ex.C1/Medical Board Report. However, the Tribunal failed to consider the said fact while awarding compensation. Further, the first respondent/claimant was not treated as in-patient and O.P. Chits alone were produced. The Tribunal has also failed to consider the fact that the first respondent suffered only lacerated injuries and hence 20% of disability taken by the Tribunal is not correct. The percentage of disability is therefore reduced from 20% to 10%.

13. Since the accident occurred in the year 2011, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.30,000/- (Rs.3,000/- X 10% disability) as against Rs.60,000/- awarded by it.

14. The Tribunal erroneously award a sum of Rs.25,000/- towards loss of amenities to the claimant, which is not in consonance with the nature of injuries suffered by him. Therefore, the sum of Rs.25,000/- is hereby set aside and no compensation is required to be awarded to the claimant under the head loss of amenities.

15. Except the above modification under the heads "disability" and "loss of amenities", the other amount awarded by the Tribunal under the other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation is re-calculated as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	Rs.60,000/-	Rs.30,000/-	Reduced
2.	Pain and Sufferings	Rs.30,000/-	Rs.30,000/-	Confirmed
3.	Loss of amenities	Rs.25,000	---	Set aside
4.	Medical expenses	Rs.16,621/-	Rs.16,621/-	Confirmed
5.	Extra nourishment	Rs.5,000/-	Rs.5,000/-	Confirmed
6.	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
7.	Attendant charges	Rs.5,000/-	Rs.5,000/-	Confirmed
	Total	Rs.1,46,621/-	Rs.91,621/-	Reduced by Rs.55,000/-



16. In the result, the Award and Decree dated 27.02.2018 made in M.C.O.P.No.717 of 2011, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Villupuram @ Tindivanam is modified. The Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed. No costs. The compensation awarded by the Tribunal at Rs.1,46,621/- is hereby reduced to Rs.91,621/- [Rupees Ninety One Thousand Six Hundred and Twenty One only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment, to the credit of M.C.O.P.No.717 of 2011, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Villupuram @ Tindivanam, at the first instance and recover the same from the second respondent/rider cum owner of the vehicle.

17. On such deposit, the first respondent/claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount if any deposited by them. In other aspects, the amount awarded by the Tribunal shall stand confirmed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To:

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Villupuram @ Tindivanam.



2.The Section Officer,
VR Section,
High Court of Madras.

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+lcc to Mr.J.Michael Visuvasam, Advocate SR.No.65594

+lcc to M/s.K.M.Vijayan Associates, Advocate SR.No.65351

C.M.A.No.1670 of 2018

SVI (CO)
CB(08/04/2022)